

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 15, 2009 Session

IN THE MATTER OF: C.W.M., M.L.M., AND T.G.M.

**Appeal from the Juvenile Court for DeKalb County
No. 1415-CJ-06 Bratten H. Cook, II, Judge**

No. M2008-02461-COA-R3-PT - Filed May 14, 2009

Father of three minor children appeals the termination of his parental rights. The trial court terminated Father's rights on the grounds he abandoned the children by failing to provide a suitable home, the persistence of the conditions that resulted in removal from Father's custody, and Father's failure to substantially comply with the permanency plans, and upon the finding that termination was in the children's best interests. We affirm the trial court in all respects.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and RICHARD H. DINKINS, J., joined.

Bud Sharp, McMinnville, Tennessee, for the appellant, the children's father.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Joshua Davis Baker, Assistant Attorney General, for the appellee, State of Tennessee Department of Children's Services.

MEMORANDUM OPINION¹

The genesis of these proceedings and the exodus of the children from their parents' custody occurred on March 4, 2005, when the Department of Children's Services responded to a call and found two minor children, five-year-old M.M. and six-year-old C.M., locked out of their parents' apartment. Emergency Medical Services was called and responded to attend to M.M., who had

¹Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

fallen on a hypodermic needle and punctured her leg. The police were called because efforts to gain access to the children's apartment were unsuccessful. When the police arrived, they also attempted to gain access to the apartment by knocking on the door and windows, but were unable to get anyone to respond. When the apartment manager agreed to unlock the door to the apartment, the scent of burning marijuana wafted from the apartment as the door opened. The parents' third child, three-year-old T.M., was found inside roaming around the apartment unattended while his parents slept. Butcher knives were on the floor of the apartment where the three-year-old had been roaming.

The Department requested both parents submit to a drug test; they refused.

Neighbors reported the children were often locked out of the home and sometimes begged the neighbors for food.

The Department immediately removed all three children from their parents' custody and obtained a protective custody order on March 9, 2005, temporarily placing the children in the Department's custody. The children were adjudicated dependent and neglected on April 20, 2005.

The first of many permanency plans was prepared on March 30, 2005.² The plan required Father to attend supervised visits with the children and to remain sober during the visits; complete parenting classes; pay child support; submit to an alcohol and drug assessment and participate in Alcoholics Anonymous and Narcotics Anonymous; provide appropriate housing for the children; and submit to random drug screenings.

Thereafter, Father obtained a suitable home, but he did not complete a parenting assessment or a mental health assessment, he did not attend parenting classes, and he did not attend AA or NA meetings. An alcohol and drug assessment indicated that Father needed intensive outpatient treatment for substance abuse; however, he failed to get the necessary treatment and his substance abuse continued. He refused to take a drug test in November 2005. In December 2005, he tested positive for opiates and marijuana. In February 2006, he admitted using loratab and morphine.

In the interim, the Department had arranged for and funded the alcohol and drug assessment for Father, arranged parenting education classes, contracted with Compass Care Alliance to provide therapeutic visitation services and a parental assessment. However, Compass Care was unable to provide services to Father for he was incarcerated much of 2005. The Department also set up a mental health evaluation for Father and offered transportation to and from the mental health and parenting assessments.

A second permanency plan, which was substantially identical to the first, was adopted in April 2006. The results were also substantially identical; Father generally failed to cooperate and

²Plans were also prepared for Mother. The goals for Mother and her compliance, or substantial lack of compliance, are not discussed because she did not appeal the termination of her parental rights and she is not a party to this appeal.

accomplished little. After 2006, the Department stopped providing therapeutic visitation services because Father refused to attend the sessions. Nevertheless, the Department set up a psychological assessment and parenting classes for Father, arranged payment for the classes, and gave Father a \$50 gas card to aid in transportation to the appointments. Father, however, failed to attend both the first and second appointments. The Department thereafter declined to set up future appointments. As for the gas card, Father sold it instead of acquiring gas with it.

On August 30, 2006, the Department filed a petition to terminate the parental rights of Father to his three minor children, C.M., M.M., and T.M.

In the interim, the children were living with a foster family. All three children needed intensive sex-abuse therapy. M.M. and C. M. had been sexually abused by a cousin and C.M. was acting out to such an extent he had to be separated from his siblings and placed with a separate foster family. M.M. and T.M. were residing in a pre-adoptive home at the time of trial and were healthy, happy, and doing well in school. Both of them had bonded with their foster family and had begun referring to the foster parents as “mom” and “dad.” The children seldom talked about Father. When questioned at trial, Father could not state the correct birth date of any of the three children.

When the termination proceedings came on for trial in October 2007, Father was again incarcerated, this time for various offenses including violating probation, writing worthless checks, failing to appear in court, public intoxication, and assault. In fact, Father had been incarcerated sixteen times since 2003. During the pendency of these proceedings, Father was out of jail from March through August of 2005; September through December of 2005; September 24 through November 24, 2006; and December 24, 2006, through April 10, 2007. He was incarcerated the rest of the time.

Following the trial of this case, the trial court found that the Department had made reasonable efforts to assist Father in complying with the terms of the permanency plans by arranging for mental health, alcohol and drug, and parenting assessments; by arranging random drug screenings; by providing supervised and therapeutic visitation; by offering to pay deposits for utilities and housing; and by maintaining contact with Father and visiting him in jail, which was his most frequent abode. The trial court also found that Father “has failed to make any attempt to help himself or to help his children.”

As for grounds, the trial court found the Department had established by clear and convincing evidence that Father abandoned the children by failing to provide a suitable home, that the conditions that resulted in the children’s removal persisted, and that Father failed to substantially comply with the terms of the permanency plans. We have determined the evidence in the record fully supports the trial court’s findings of each of the three grounds. The trial court also found that termination of Father’s parental rights was in each of the children’s best interests. This finding is also fully supported by the record.

For the foregoing reasons, we affirm the judgment of the trial court in all respects.

In Conclusion

The judgment of the trial court is affirmed in all respects and this matter is remanded with costs of appeal assessed against the Department of Children's Services due to Father's indigency.

FRANK G. CLEMENT, JR., JUDGE